

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lauren Kerstein	Team: Team # 2	CCRB Case #: 201400357	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 01/13/2014 3:00 PM	Location of Incident: 160th Street between 107th Avenue and 108th Avenue.	Precinct: 103	18 Mo. SOL 7/13/2015	EO SOL 7/13/2015	
Date/Time CV Reported Mon, 01/13/2014 3:20 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 01/13/2014 3:20 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Haggerty	08657	947767	103 PCT
2. POM Michael Butler	02535	948725	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Butler	Abuse: PO Michael Butler stopped § 87(2)(b)	
B.POM Daniel Haggerty	Abuse: PO Daniel Haggerty stopped § 87(2)(b)	
C.POM Michael Butler	Abuse: PO Michael Butler frisked § 87(2)(b)	
D.POM Michael Butler	Abuse: PO Michael Butler searched § 87(2)(b)	
E.POM Michael Butler	Abuse: PO Michael Butler refused to provide his shield number to § 87(2)(b)	
F.POM Michael Butler	Off. Language: PO Michael Butler made remarks to § 87(2)(b) based upon race.	
G.POM Michael Butler	Abuse: PO Michael Butler threatened to arrest § 87(2)(b)	
H.POM Michael Butler	Discourtesy: PO Michael Butler spoke discourteously to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via phone on January 13, 2014 (encl. B1-B2). On January 13, 2014, at approximately 3 p.m., on 160th Street between 107th and 108th Avenue in Queens, § 87(2)(b) was stopped by officers. The following allegations resulted:

- **Allegation A: Abuse of Authority –PO Michael Butler stopped** § 87(2)(b)
- **Allegation B: Abuse of Authority –PO Daniel Haggerty stopped** § 87(2)(b)
§ 87(2)(g)
- **Allegation C: Abuse of Authority –PO Michael Butler frisked** § 87(2)(b)
- **Allegation D: Abuse of Authority –PO Michael Butler searched** § 87(2)(b)
- **Allegation E: Abuse of Authority –PO Michael Butler refused to provide his shield number to** § 87(2)(b)
- **Allegation F: Offensive Language –PO Michael Butler made remarks to** § 87(2)(b)
based upon race.
- **Allegation G: Abuse of Authority- PO Michael Butler threatened to arrest** § 87(2)(b)
- **Allegation H: Discourtesy –PO Michael Butler spoke discourteously to** § 87(2)(b)
§ 87(2)(g)
- § 87(4-b), § 87(2)(g)
- § 87(4-b), § 87(2)(g)
- § 87(4-b), § 87(2)(g)

§ 87(2)(b) rejected mediation.

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)
- § 87(2)(b)

CCRB Statement

§ 87(2)(b) provided an initial phone statement on January 13, 2014 (encl. B1-B2), and an in-person statement to the CCRB on January 17, 2014 (encl. C1-C9). § 87(2)(g)

On January 13, 2014, at approximately 1:55 p.m., § 87(2)(b) exited his house on § 87(2)(b) and began walking towards a store on 160th Street and 107th Avenue. § 87(2)(b) later said that he was coming from a store at this location after buying a bag of pretzels and that he was heading to his wife's house). § 87(2)(b) had fifty-five dollars in his right front pants pocket. His wallet and keys in his left back jeans pocket, and was holding a small bag of pretzels in his right hand.

While he was walking, § 87(2)(b) ran into a man he knows named § 87(2)(b) and § 87(2)(b) verbally greeted each other and talked for less than a minute. § 87(2)(b) then began to walk down 107th Avenue and § 87(2)(b) went towards 108th Avenue. After initially stating in his in-person statement and initial statement that he never made physical contact with § 87(2)(b) later said in his interview that he said goodbye to § 87(2)(b) by knocking his fist on top of § 87(2)(b) fist. § 87(2)(b) then observed PO Michael Butler and PO Daniel Haggerty, driving a black unmarked Impala down 160th Street towards 107th Avenue (see enclosure C5, for descriptions).

The police car made a U-turn and pulled up next to the sidewalk a few feet in front of § 87(2)(b). PO Haggerty exited the car, asked § 87(2)(b) where he was going, and told § 87(2)(b) that he knew that § 87(2)(b) passed him something. § 87(2)(b) backed up until he was against a gate that was behind him (In his phone statement § 87(2)(b) stated that PO Butler said, "Shut the fuck up. I'm the cop here. Get your little nigga ass up on the gate." He did not repeat these allegations during his in-person statement). PO Haggerty reached towards § 87(2)(b) jeans pocket, but § 87(2)(b) pushed PO Haggerty's hand away and told PO Haggerty that he had not committed any crime and was going home.

PO Butler exited the car and came within a few inches of § 87(2)(b) face. PO Butler told § 87(2)(b) that he had been talking to a known drug dealer who had just given § 87(2)(b) drugs. PO Butler then told § 87(2)(b) that if he gave him the drugs he would go easy on him. § 87(2)(b) turned around so he was facing the gate and said, "Find the drugs. Go ahead, search me. If you find drugs, lock me up. If you don't, I want your badge numbers, because I want to report you."

PO Butler frisked § 87(2)(b) arms, torso region, legs and ankles and then reached into § 87(2)(b) two front jacket pockets. § 87(2)(b) tried to walk forward off the gate but PO Butler told him to get back on the gate and pushed § 87(2)(b) against the gate.

§ 87(2)(b) asked PO Butler for his badge number because he wanted to report him. PO Butler and PO Haggerty started to walk away. § 87(2)(b) then repeated his request but this time directed it at both officers. PO Haggerty yelled, "8657" and PO Butler responded, "I'm big Butler." PO Haggerty entered the unmarked car but PO Butler then went up to § 87(2)(b) and stated, "Little nigger, if I don't get you one way I'll get you another way. If I don't get you, my boys will get you. I've seen you with your wife. If I don't get you, I'll have niggers come down and kick your door down and get them and arrest your whole family." (In his initial statement, § 87(2)(b) stated that the phrase was, "If we don't catch you, we will run up in your house. You don't need my fucking name; get the fuck out of here. If you say something I'll beat your ass right now. I'll handcuff you and beat the shit out of you." § 87(2)(b) did not repeat this statement in his in-person statement.)

§ 87(2)(b) began to argue with PO Butler and both of them said, "Fuck you" to each other. The officers then left.

Attempts to Contact Civilians

§ 87(2)(b) did not know § 87(2)(b) real name but stated that his wife knows § 87(2)(b) mother, whose name is § 87(2)(b). A Lexis Nexis search was conducted on February 10, 2014, which yielded one address and two phone numbers for § 87(2)(b) (encl. H1). Between February 10, 2014 and March 12, 2014, five phone calls were made and two letters were sent with no response.

NYPD Statements:

Subject Officer: PO MICHAEL BUTLER

- PO Butler was § 87(2)(b) old at the time of this incident. He is a 6'2" tall, 240-pound white man with brown hair and hazel eyes.
- On January 13, 2014, PO Butler worked from 12 p.m. to 8:35 p.m. assigned to Anti-Crime patrol with PO Daniel Haggerty. PO Butler worked in plainclothes assigned to unmarked vehicle #322.

Memo book

PO Butler does not have any memo book entries pertaining to this incident. Beginning at 2 p.m., PO Butler made no entries until he affected an unrelated arrest at 5 p.m. (encl. D1-D3).

CCRB Statement

PO Butler provided a statement to the CCRB on August 5, 2014 (encl. D4-D7).

On January 13, 2014, at approximately 2p.m., PO Butler observed § 87(2)(b) for approximately 20 seconds. § 87(2)(b) was in the midst of what appeared to be a hand to hand exchange in a high crime and drug prone location with another individual. § 87(2)(b) and the other individuals' hands made contact for a few seconds (longer than a normal handshake) that due to his training as a narcotics officer, made PO Butler suspect that it was a drug transaction. PO Butler made the observation while he was driving northbound on 160th Street between 107th and 108th Avenue in Queens, from approximately 30 feet away. PO Butler was unable to see if they were holding any objects in their hands or if they had exchanged any objects. In addition, PO Butler recognized the other individual whose hands made contact with § 87(2)(b) to be a gang member and violent felon who has had multiple arrests for drug sales and drug possession within the confines of the precinct.

Both officers then exited their vehicle and began to approach § 87(2)(b). When § 87(2)(b) saw them open their car door, he ducked behind a car causing PO Butler to believe § 87(2)(b) bought drugs and was attempting to drop them. The officers decided to stop § 87(2)(b) instead of the other individual because § 87(2)(b) ducked behind a car when he saw them and the other individual walked in the opposite direction which made § 87(2)(b) closer to them.

Both officers stopped § 87(2)(b) and asked him what had just transpired with the other individual. § 87(2)(b) started yelling that the officers were not allowed to stop him. PO Butler was unable to recall what happened next in the interaction with § 87(2)(b) or how the interaction ended.

PO Butler stated that he never used profanity in his interaction with § 87(2)(b). PO Butler could not recall if he or his partner frisked or searched § 87(2)(b). PO Butler never called § 87(2)(b) a "nigger," or pushed § 87(2)(b) against a fence. PO Butler never threatened to arrest § 87(2)(b) or any of the members of his family. If § 87(2)(b) would have requested his shield number, PO Butler would have provided it to § 87(2)(b). A Stop, Question and Frisk Report was not prepared.

Subject Officer: PO DANIEL HAGGERTY

- *PO Haggerty was § 87(2)(b) old at the time of this incident. He is a 6'2" tall, 215-pound white man with blonde hair and blue eyes.*
- *On January 13, 2014, PO Haggerty worked from 12 p.m. to 8:35 p.m. assigned to Anti-Crime with PO Butler. PO Haggerty worked in plainclothes and was assigned to an unmarked vehicle #322.*

Memo book

3 p.m., male stopped 108th Street and 160th Street. § 87(2)(b) Refused date of birth and address. Actions indicative of a drug transaction. UF-250 prepared for criminal sale of a controlled substance (encl. E1-E2).

CCRB Statement

PO Haggerty provided a statement to the CCRB on July 22, 2014 (encl. E3-E7). § 87(2)(g)

On January 13, 2014, at approximately 3 p.m., in the vicinity of 160th Street between 107th Avenue and 108th Avenue in Queens, a known drug location, from the passenger seat of his police vehicle, PO Haggerty observed § 87(2)(b) shake hands with a known drug dealer. § 87(2)(b) and the other individual first palm slapped their hands, linked their fingers together then went closer to each other to “bring it in” and then turned slightly. PO Haggerty stated that it was the type of handshake he learned from his training that people used when they wanted to be discreet about exchanging objects. PO Haggerty could not make out what the objects were or if they were exchanged. PO Haggerty never lost sight of § 87(2)(b)

As § 87(2)(b) began to walk off, PO Haggerty and PO Butler approached § 87(2)(b) PO Haggerty decided to approach § 87(2)(b) because drug dealers usually only bring enough drugs to sell to one customer. Therefore, if the officers recovered drugs from § 87(2)(b) they would know he bought drugs from that dealer. The officers asked § 87(2)(b) what he had talked to the drug dealer about and if he had gotten anything from him. PO Haggerty later stated that they had only asked him if they could talk to him. § 87(2)(b) became irate and started yelling profanities and waving his hands at them. Since § 87(2)(b) had become irate, PO Haggerty decided to document the encounter and asked § 87(2)(b) for his ID but § 87(2)(b) kept refused to provide it. PO Haggerty and PO Butler made the decision to leave given they were by public housing and did not want a crowd to gather. PO Haggerty filled out a Stop, Question and Frisk Report and submitted it to his command.

PO Haggerty never heard PO Butler use profanity in his interaction with § 87(2)(b) PO Haggerty could not recall if § 87(2)(b) was ever frisked but he stated that § 87(2)(b) was not searched. § 87(2)(b) never requested PO Butler’s shield number and PO Butler never refused to provide it. PO Haggerty never heard PO Butler call § 87(2)(b) a “nigger.”

NYPD Documents

Stop, Question and Frisk Report

An MAS and IAB search were both conducted and no Stop, Question and Frisk Report could be located for § 87(2)(b) and no entry in the log provided by the officers’ command corresponded to this incident (encl. II).

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of April 30, 2014, fifteen days after the mandatory 90-day filing period, with regard to the incident. (encl. J1).

Civilian Criminal History

- § 87(2)(b) [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian CCRB History

- § 87(2)(b) has filed the following CCRB complaints (encl. A4):
 - § 87(2)(b) [REDACTED]
[REDACTED]

Subject Officers CCRB History

- PO Haggerty has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. A3).
- PO Butler has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. A1-A2).

Conclusion

Allegations Not Pleaded

- In his phone statement, § 87(2)(b) stated that PO Butler said, “Shut the fuck up. I’m the cop here. Get your little nigga ass up on the gate,” when first approaching him. § 87(2)(b) also alleged that before leaving PO Butler stated, “If we don’t catch you, we will run up in your house. You don’t need my fucking name; get the fuck out of here. If you say something I’ll beat your ass right now. I’ll handcuff you and beat the shit out of you.” Since § 87(2)(b) did not mention these in his CCRB interview five days later, allegations for these comments have not been pleaded.
- § 87(2)(b) alleged that PO Butler threatened to “kick” his door down and arrest his family. The alleged threat to damage § 87(2)(b) property has been subsumed under PO Butler’s threat to arrest § 87(2)(b).

Identification of Subject Officers

- PO Haggerty and PO Butler both acknowledged their interaction with § 87(2)(b).

Investigative Findings and Recommendations

Allegation A: Abuse of Authority –PO Michael Butler stopped § 87(2)(b)

Allegation B: Abuse of Authority –PO Daniel Haggerty stopped § 87(2)(b)

§ 87(2)(b) stated that while walking home, he briefly stopped to talk to § 87(2)(b) a man he knows from his neighborhood, and that § 87(2)(b) knocked his fist on top of § 87(2)(b) fist before heading off in opposite directions. Shortly after, § 87(2)(b) alleged that PO Butler and PO Haggerty stopped him and accused him of buying drugs from § 87(2)(b).

PO Butler stated that he observed § 87(2)(b) make a longer than normal hand contact with a known drug dealer, which his training led him to believe was a drug transaction despite PO Butler not being able to see the objects that were supposedly being exchanged. Furthermore, PO

Butler alleged that as they approached § 87(2)(b) § 87(2)(b) made eye contact with them and ducked behind a car. PO Haggerty supported PO Butler's statement that they observed § 87(2)(b) in what PO Haggerty described as an "elaborate" hand shake with a drug dealer, however PO Haggerty did not mention § 87(2)(b) ducking behind a car and further stated that he never lost sight of § 87(2)(b) § 87(2)(g)

In order to stop an individual, an officer needs reasonable suspicion to believe that the person has committed, was committing, or was about to commit a crime. People v. DeBour, 40 N.Y.2d 210, 223 (1976) (encl.iv-xv). Despite being present in a drug prone location and the officers' training in narcotics, if the officers cannot see what was passed between the individuals supposedly making the exchange, and could not describe any other furtive conduct, they do not have reasonable suspicion to stop the individuals in question. People v. Loper, 115 A.D.3d (App. Div 2nd Dep't. 2014)(encl. i-iii).

§ 87(2)(g)

§ 87(2)(g)

Allegation C: Abuse of Authority –PO Michael Butler frisked § 87(2)(b)

Allegation D: Abuse of Authority –PO Michael Butler searched § 87(2)(b)

Allegation E: Abuse of Authority –PO Michael Butler refused to provide his shield number to § 87(2)(b)

Allegation F: Offensive Language –PO Michael Butler made remarks to § 87(2)(b) based upon race.

Allegation G: Abuse of Authority- PO Michael Butler threatened to arrest § 87(2)(b)

Allegation H: Discourtesy –PO Michael Butler spoke discourteously to § 87(2)(b)

After the officers stopped § 87(2)(b) he alleged that PO Butler frisked and searched him. As the officers were leaving § 87(2)(b) stated that he asked for their shield numbers and alleged that PO Butler only provided his name. PO Butler then called § 87(2)(b) a "nigger," threatened to arrest him, and then spoke discourteously to him.

PO Butler could not recall whether or not § 87(2)(b) was frisked or searched and PO Haggerty also could not recall if § 87(2)(b) was frisked but stated that § 87(2)(b) was not searched. PO Butler denied refusing to provide his shield number or making any remark towards § 87(2)(b) about his race, threatening to arrest him or using profanity towards him. PO Haggerty also denied these allegations and in addition, noted that because of § 87(2)(b) aggressive behavior towards them, they decided to end the interaction.

§ 87(2)(g)

§ 87(2)(g)

[illegible][illegible]

Team: 2

Investigator: _____
Signature Print Date

Supervisor: _____

Title/Signature	Print	Date
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Reviewer: _____
 Title/Signature Print Date

Reviewer: _____
 Title/Signature Print Date